



# Flathead County Planning & Zoning

1035 1st Ave W, Kalispell, MT 59901  
Telephone 406.751.8200 Fax 406.751.8210



## **PETITION FOR ZONING AMENDMENT**

*Submit this application, all required information, and appropriate fee (see current fee schedule) to the Planning & Zoning office at the address listed above.*

**FEE ATTACHED \$ 1994.00**

### **APPLICANT/OWNER:**

1. Name: Eagle Creek, LLC, Attn: Stephen Isley Phone: (406) 261-6599
2. Mail Address: P.O. Box 1984
3. City/State/Zip: Whitefish, MT 59937
- 4 Interest in property (if map amendment): Owners

**Check which applies:** ☒ Map Amendment ☐ Text Amendment:

### **TECHNICAL/PROFESSIONAL PARTICIPANTS:**

1. Name: Sands Surveying Inc. Phone: (406) 755-6481
2. Mailing Address: 2 Village Loop
3. City, State, Zip: Kalispell, MT 59901
4. Email: eric@sandssurveying.com

### **IF THE REQUEST PERTAINS TO AN AMENDMENT TO THE TEXT OF THE ZONING REGULATIONS, PLEASE COMPLETE THE FOLLOWING:**

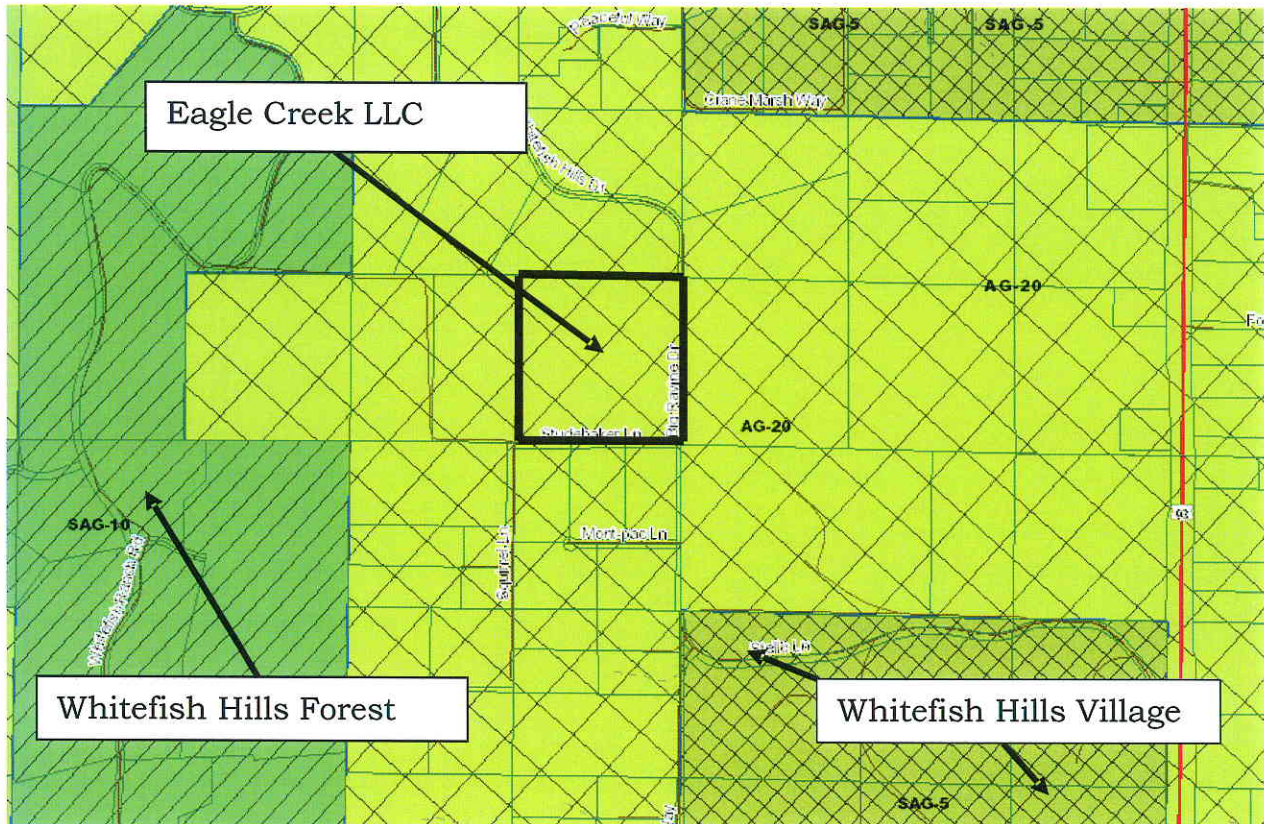
- A. What is the proposed zoning text/map amendment? N/A

### **IF THE REQUEST PERTAINS TO AN AMENDMENT TO THE ZONING MAP PLEASE COMPLETE THE FOLLOWING:**

- A. Address of the property: 125 Studebaker Ln, Whitefish
- B. Legal Description: Tract 6AA (See Attached Metes and Bounds)  
(Lot/Block of Subdivision or Tract #)  
14 - T30N - R22W  
Section Township Range  
(Attach sheet for metes and bounds)
- C. Total acreage: 39.8 acres
- D. Zoning District: Blanchard Lake Zoning District
- E. The present zoning of the above property is: AG-20 (Agricultural)
- F. The proposed zoning of the above property is: SAG-10 (Suburban Agricultural)
- G. State the changed or changing conditions that make the proposed amendment necessary: The property is 39.8 acres in size and the applicants would like to split the property. As the applicants don't have a full 40 acres, they are 0.2 acres short, they cannot split the property. The SAG-10 would allow the

owners the ability to split the property. Although the applicant's property is not directly adjacent to SAG-10 property it is within ¼ mile of SAG-10 properties to the west in Whitefish Hills Forest. In addition, there are SAG-5 properties a ¼ mile to the south in Whitefish Hills Village and to the north.

Figure 1



**THE FOLLOWING ARE THE CRITERIA BY WHICH ZONING AMENDMENTS ARE REVIEWED. PLEASE PROVIDE A RESPONSE AND DETAILED EXPLANATION FOR EACH CRITERION FOR CONSIDERATION BY THE PLANNING STAFF, PLANNING BOARD, AND COMMISSIONERS.**

1. Is the proposed amendment in accordance with the Growth Policy/Neighborhood Plan?

The property is located within the boundary of the old Whitefish City/County Master Plan and has a "Limited Rural Residential" Map designation which is defined in the agricultural section of the Master Plan. The proposed SAG-10 with a maximum density of one unit per 10 acres, conforms to many of the recommendations of the Master Plan in that it is a rural designation that anticipates large lots and agricultural/timberland uses. Of note, the Whitefish City County Master Plan was adopted by the City of Whitefish and Flathead County back in 1996 and has not been updated since. This Master Plan was

adopted prior to the Growth Policy statutes and particularly the provision that states these Long Range Growth Policies/Master Plans are not regulatory documents. Since the adoption of the 1996 Master Plan, Whitefish Hills was developed with three phases, Whitefish Hills Forest was approved for SAG-10 zoning and a preliminary plat approval for 49 lots and Whitefish Hills Village has been approved for SAG-5 zoning, a PUD, and a preliminary plat for 88 lots.

#### Whitefish City-County Master Plan Year 2020

##### Agricultural and Rural Element

Goal 8B Conserve Agricultural Lands by allowing their limited conversion only if those areas are not productive or are needed for proper urban expansion.

*The proposed zone change is located on lands that do not or have never produced a crop. The applicant's property used to be surrounded by corporate timber lands but those lands were sold 20 years ago and have become the subdivisions of Whitefish Hills, Whitefish Hills Forest and Whitefish Hills Village. The proposed SAG-10 designation is in character with the surrounding land uses and zoning designations.*

Policy 8.4 Extending municipal services and roads into agricultural lands which would result in the premature development of such areas shall be avoided.

*Stelle Lane and Big Ravine Drive have been reconstructed and paved to County Standards by the developer of Whitefish Hills. This road system provides excellent access to the subject property.*

#### Policy 8.12.c Limited Rural Residential

- 1) Residential density of one dwelling unit per 20 or more acres.
- 2) This designation is characterized by rural residential uses or by scattered farming, grazing, or the subject property timberlands which do not meet the criteria described above for important farmlands or important timber lands.
- 3) This designation is intended to provide lands for limited development which avoids inefficient and inadequate provision of public services and infrastructure and densities incompatible with the surrounding area.
- 4) Avoid extension of sewer or water facilities into these areas, in order to prevent premature development.

As the requirement for a 20 acre density is no longer legal by state law, I will focus on the other three policies of the Limited Rural Residential designation. The subject property is identified in the Upper Flathead Valley Soils Survey as Whitefish cobbly silt loam (Ws) with a soils capability rating of VIe-1. Only class I through IV are considered prime and these soils. The Class VIe-1 soils generally are unsuitable for cultivation but they can grow trees. The infrastructure for suburban development is in place with good road access, proximity to schools and services in Whitefish and located in the Whitefish Fire Service Area. The applicant is not proposing to extend sewer and water facilities into this area but will use on-site sewer and water systems

#### Natural Resources

Policy 2.1 Minimize development density on environmentally sensitive lands and critical wildlife habitat.

The subject property is not located on sensitive lands; there are no surface waters, wetlands, hydric soils, etc. on the property. As with everything in the Flathead Valley, the property is mapped as Whitetail Winter Range by Fish, Wildlife, and Parks, however the 10 acre lots should still provide habitat for Whitetail Deer.

2. Is the proposed amendment designed to:

- a. Secure safety from fire and other dangers? The subject property is within the Whitefish Fire Service Area. Whitefish Hills has a tanker recharge facility in Blanchard Lake approximately 1.25 miles north of the subject property. Another tanker recharge facility is proposed with the first phase of Whitefish Hills Forest approximately two miles west of the proposed zone change. The property is not mapped within the 100-year Floodplain (FIRM Panel 1405G). The topography is gentle with only the northwest corner having significant slopes.
- b. Promote public health, public safety and the general welfare? The property accesses Big Ravine Drive which heads south turning into Stelle Lane and out to Highway 93 on the East (Figure 1). Big Ravine and Stelle Lane were paved to County Standards by the Whitefish Hills developer approximately three years ago. The Flathead County Sheriffs Office provides police protection and the Whitefish Rural Fire Service Area provides fire protection. The proposed SAG-10 zoning classification

provides the same setback and height standards as the existing AG-20 zone and very similar land use restrictions. The uses permitted and conditionally permitted by the Flathead County Zoning Regulations for the AG-20 (existing) and SAG-10 (proposed) are almost identical with the exception that the AG-20 allows Fish Hatcheries, Kennels and Nurseries as permitted uses but not in the SAG-10. The AG-20 allows, with a Conditional Use Permit (CUP), Feed and Seed processing Plants and Feed Lots whereas the SAG-10 does not but the SAG-10 allows Golf Courses, Kennels and Manufactured Home Parks with a CUP. Most of these conditional uses would not fit or be appropriate for this area anyway.

- c. Facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements? The property has access to Big Ravine Drive which was designed and constructed to County Standards which heads south turning into Stelle Land and out to Highway 93. Big Ravine Drive is publicly owned but maintained by the Whitefish Hills HOA per an agreement with the County. The subject property will be serviced by individual sewer and water systems. There is an existing house with a drainfield on the property. The septic system application (approved 6/14/73) for the house did not detect any groundwater on the site. Water wells are good in this area. The property is within the Whitefish School District. The Whitefish School District completed a major remodel of Central School approximately seven years ago and voters recently approved a School Bond to complete a major remodel of the High School Facility. While the School District has been investing in its infrastructure, the overall trend in the district is a declining enrollment. The Flathead County Statistical Report of Schools 2012, prepared by the County Superintendents Office, shows a decrease of enrollment in the Whitefish Elementary Schools of 8% over the last ten years and a decrease of 29% in the High School over the same period. In general, larger lots like the 10 plus acres proposed with the SAG-10 zoning require less park land than more urban densities.

3. Does the proposed amendment consider:

- a. The reasonable provision of adequate light and air? The proposed SAG-10 zoning designation has a minimum lot size of 10 acres and identical setbacks to the AG-20 that the applicants propose to replace.

Studebaker Lane consists of a mix of lots sizes ranging from 5 to 40 acres in size. The proposed SAG-10 zoning designation does provide adequate light and air.

- b. The effect on motorized and non-motorized transportation systems? The subject parcel has direct access to Big Ravine Drive which is paved and constructed to County Standards within a 60-foot road right-of-way. The road network provides good access for vehicles and with the very low traffic volumes provides good access for bike and pedestrian use. There is no public bike or pedestrian trails near the subject property.
- c. Compatible urban growth in the vicinity of cities and towns that at a minimum must include the areas around municipalities? The subject property is not located within close proximity of a City or town. The existing zoning designation and the proposed designation are both "Rural" in land use and density.
- d. The character of the district and its peculiar suitability for particular uses? The subject parcel is a 40 acre tract that is largely forested (See Figure 2). The property to the south is forested with zoning AG-20 and SAG-5 and tracts ranging five to 20 acres in size. The property to the east is forested with zoning of AG-20 and tracts of 20 to 40 acres in size. The property to the north is forested with zoning of AG-20 and SAG-5 and tracts five to twenty acres in size. The properties to the west are forested and zoned AG-20 and SAG-10 with tracts of ten to 40 acres in size. The uses allowed in the AG 20 are almost identical to those of the proposed SAG-10.

Figure 2



Considering the provisions of Spot Zoning and the “Three Part Test” as provided by legal precedent in Little vs. Board of County Commissioners. Spot Zoning is determined by the Court to be an illegal action if the request is found to meet **all** three of the tests. The three tests are as follows:

- i. *The zoning allows a use that differs significantly from the prevailing use in the area.*

The proposed SAG-10 zoning classification provides the same setback and height standards as the existing AG-20 zone and very similar land use restrictions. The uses permitted and conditionally permitted by the Flathead County Zoning Regulations for the AG-20 (existing) and SAG-10 (proposed) are almost identical with the exception that the AG-20 allows Fish Hatcheries, Kennels and Nurseries as permitted uses but not in the SAG-10. The AG-20 allows, with a Conditional Use Permit (CUP), Feed and Seed processing Plants and Feed Lots whereas the SAG-10 does not, but the SAG-10 allows Golf Courses, Kennels and Manufactured Home Parks with a CUP. Most of these conditional uses would not fit or be appropriate for this area anyway. As the uses existing and proposed zoning districts are almost identical, the proposed action does not meet this test

- ii. The zoning applies to a small area or benefits a small number of separate landowners.

The proposed zone change encompasses 39.8 acres. Although this is not a huge property it is significantly larger than the five and ten acres tracts that abut the applicant's property on the south but also have the AG-20 designation. This test is a matter of opinion as to the scale of the request and could be argued either way.

- iii. The zoning is designed to benefit only one or a few landowners at the expense of the surrounding landowners or the general public and this is in the nature of special legislation.

The property proposed for the zone change is under a single ownership; however, ¼ to the north east is a large SAG-5 zoning classification with many five acre tracts. To the west ¼ mile is the Whitefish Hills Forest development with SAG-10 zoning and a preliminary plat that will create 47 lots of ten acres each. To the south ¼ mile is the Whitefish Hills Village property with SAG-5 zoning and a PUD overlay/ Preliminary Plat which is approved for 88 lots of two to five acres in size (Figure 1). The proposed zone change sits in the middle of these development and proposed developments with densities of ten acres or less. Approving the proposed zone change will blend with surrounding neighborhoods and is not considered a special benefit. The proposed action does not meet this test.

As presented the proposed zone change application does not meet **all** three tests for "spot zoning" and therefore should be considered a legal request.

- e. Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area? The permitted and conditionally permitted used of the proposed Zoning designation of SAG-10 are almost identical to that of the existing AG-20 zoning classification. The primary difference between the two zoning designations is the density where the proposed zoning designation has a minimum lot size of

10 acres per lot and the existing zoning designation has a minimum lot size of 20 acres per lot.

4. Is the proposed amendment, as nearly as possible, compatible with the zoning ordinances of nearby municipalities?

The nearest City Zoning is the Whitefish Extra-Territorial Zoning Planning/Zoning Jurisdiction which extends two miles outside of the City Limits is located just east of Big Ravine Drive. The City's zoning is comprised of AG-20 and SAG-5 in proximity to the applicant's property. The land use categories are almost identical to the proposed SAG-10 zoning classification

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*The signing of this application signifies approval for the Flathead County Planning & Zoning staff to be present on the property for routine monitoring and inspection during approval process.*

Stephen Isley  
Owner/Applicant Signature(s)

11-20-13  
Date

## **APPLICATION PROCESS**

### **APPLICABLE TO ALL ZONING APPLICATIONS:**

A. Pre-Application Meeting:

A pre-application meeting is highly recommended. This can be scheduled at no cost by contacting the Planning & Zoning office. Among topics to be discussed are: Master Plan compatibility with the application, compatibility of proposed zone change with surrounding zoning classifications, and the application procedure.

B. Completed application.

C. Application fee.

D. The application must be accepted as complete by the Flathead County Planning & Zoning staff prior to the date of the planning board meeting at which it will be heard in order that requirements of state statutes and the zoning regulations may be fulfilled.

### **APPLICABLE TO APPLICATIONS FOR ZONE CHANGE:**

A. Application Contents:

1. Completed Zone Change application, including signatures of all property owners applying for zoning map amendment.

IF this is a **MAP** amendment the following are also required:

- i) A map showing the location and boundaries of the property (*vicinity map*).
- ii) A Title Report of the subject property
- iii) **Certified** Adjoining Property Owners List must be submitted with the application (*see forms below*). The list will be sent directly to the Planning & Zoning office, unless you request otherwise. This list is valid for a period of 6 months from date generated. You may also get a certified adjoining landowners list from a title company if you choose.